

EXHIBIT 6

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 THURSDAY, JULY 11, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Michael
18 Mapes, held at the offices of The Mining
19 Exchange, A Wyndham Grand Hotel & Spa,
20 8 South Nevada Avenue, Colorado Springs,
21 Colorado, commencing at 9:41 a.m., on the
22 above date, before Carrie A. Campbell,
23 Registered Diplomate Reporter and Certified
24 Realtime Reporter.

25 - - -

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28 deps@golkow.com

1 A. It is.

2 Q. And then what -- did you have
3 any jobs or positions between 1974 and 1977?

4 A. I did.

5 Q. What were those?

6 A. I was a deputy sheriff for
7 about two and a half years in Michigan, and
8 after that I worked for the -- as a civilian
9 for the Department of the Army as a budget
10 analyst for about a year.

11 Q. And then you applied for a
12 position at DEA?

13 A. Yes.

14 Q. What is a diversion
15 investigator?

16 A. Someone that investigates
17 registrants or potential registrants that
18 handle controlled substances, investigates
19 the movement of controlled substances and
20 diversion of controlled substances from
21 legitimate channels.

22 Q. In the course of your duties as
23 a diversion investigator, did you conduct
24 audits or cyclic investigations of
25 registrants?

1 A. I did.

2 Q. Including wholesalers?

3 A. Yes.

4 Q. In connection with those cyclic
5 audits -- am I using the correct phrase?

6 A. Yes.

7 Q. Okay. In connection with those
8 cyclic audits, would you review suspicious
9 order monitoring systems?

10 A. Yes.

11 Q. Was that a standard part in
12 your experience of a diversion investigator's
13 role?

14 A. It was.

15 Q. And so it was a responsibility
16 that diversion investigators needed to carry
17 out with respect to registrants for the field
18 office to which they were assigned?

19 A. That's correct.

20 Q. The results of those audits
21 would be reported on a DEA 6 report?

22 A. They would.

23 Q. If a diversion investigator
24 determines that a registrant was not
25 complying with the regulations, would the

1 investigator tell the registrant what that
2 registrant was doing wrong?

3 MR. BENNETT: Objection.

4 Incomplete hypothetical.

5 QUESTIONS BY MS. MCCLURE:

6 Q. You can answer.

7 A. Yes, they would.

8 Q. And that's in your experience
9 at DEA?

10 A. Yes.

11 Q. As a diversion investigator?

12 A. Yes.

13 Q. And later as a group
14 supervisor, you expected your diversion
15 investigators to communicate with registrants
16 about what they were doing wrong?

17 A. Yes.

18 Q. So that they could correct it?

19 A. That's right.

20 Q. Was it an expectation in your
21 experience that a diversion investigator in
22 such a circumstance would follow up to see if
23 that issue had been corrected?

24 MR. BENNETT: Objection. Form.

25 THE WITNESS: It would be

1 followed up, whether it was by that
2 diversion investigator or another one.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Okay. Audits can also be
5 conducted outside of the cyclic process if
6 there was a particular reason or something
7 came up that suggested that an audit might be
8 appropriate; is that accurate?

9 A. It is.

10 Q. What was your next position at
11 DEA after diversion investigator in
12 Cleveland?

13 A. I was a staff coordinator at
14 headquarters in Washington, DC.

15 Q. And was that for -- for how
16 long a period of time?

17 A. A little less than a year.

18 Q. What is the job of a staff
19 coordinator?

20 A. To review the reports from a
21 field office and the requests from the field
22 office for assistance with investigative
23 matters.

24 Q. So do I have it correct that a
25 field office, one of DEA's field offices, may

1 prescription-level data?

2 A. Correct.

3 Q. During your time at DEA, you
4 became familiar with the regulation regarding
5 the identification and reporting of
6 suspicious orders?

7 A. Yes.

8 Q. To your knowledge, has that
9 regulation changed since it was issued or
10 promulgated?

11 A. Not that I'm aware of.

12 Q. Is that something that you
13 believe you would have been aware of in your
14 course of employment at DEA and your
15 subsequent employment?

16 A. Probably.

17 (Mapes Exhibit 3 marked for
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. Okay. I'll hand you what's
21 been marked as 3.

22 If you could take a look at
23 that and let me know when you've had a chance
24 to look through it.

25 A. I've reviewed it.

1 Q. So when we're talking about the
2 regulation regarding to the identification
3 and reporting of suspicious orders, which
4 section of this Exhibit 3 are we talking
5 about?

6 A. Suspicious orders ends in
7 1301.74(b).

8 Q. And 1301.74(b) defines a
9 suspicious order to include orders of unusual
10 size, orders deviating substantially from a
11 normal pattern and orders of unusual
12 frequency, right?

13 A. Yes.

14 Q. Does the regulation explain to
15 a registrant how to identify an order of
16 unusual size?

17 MR. BENNETT: Objection. Form.

18 THE WITNESS: It does not.

19 QUESTIONS BY MS. MCCLURE:

20 Q. Does the regulation explain to
21 a registrant how to identify an order of
22 unusual frequency?

23 MR. BENNETT: Objection. Form.

24 THE WITNESS: It does not.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Does the regulation explain to
3 a registrant how to identify an order that
4 deviates substantially from a normal pattern?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: It does not.

7 QUESTIONS BY MS. MCCLURE:

8 Q. Registrants are responsible for
9 designing their own suspicious order
10 monitoring systems; is that correct?

11 A. It is.

12 Q. Is a registrant to take into
13 account considerations that are unique to
14 them in designing such a system, for example,
15 their customer base?

16 A. Yes.

17 Q. So would one registrant
18 potentially have a different-looking or
19 different nature of a customer base than
20 another registrant?

21 A. Yes.

22 Q. Is it possible that those
23 registrants would then have designed
24 different suspicious order monitoring
25 systems?

1 A. It's possible.

2 Q. Is there a holy grail or
3 articulated DEA model standard for what
4 constitutes a suspicious order?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: Not that I'm
7 aware of.

8 QUESTIONS BY MS. MCCLURE:

9 Q. And you've spent your 30-year
10 career in DEA in diversion-related roles?

11 A. Yes.

12 Q. Does DEA define for registrants
13 what essential features are that every
14 suspicious order monitoring system must have
15 to be compliant?

16 MR. BENNETT: You can answer.

17 THE WITNESS: They may talk
18 with industry or with industry
19 associations about those kind of
20 things or answer specific questions
21 from a registrant.

22 QUESTIONS BY MS. MCCLURE:

23 Q. So in your experience, DEA may
24 answer a specific question from a registrant
25 about a possible feature that that registrant

1 You can answer.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Meaning that the individual or
5 entity reviewing that order takes into
6 account the totality of the circumstances and
7 makes a determination as to whether that
8 order is or is not a suspicious order; is
9 that right?

10 A. Yes.

11 Q. Have you heard the phrase
12 "totality of circumstances" previously in the
13 course of your tenure at DEA?

14 A. I have.

15 Q. Do you recall in what context
16 you've heard that?

17 A. Discussing suspicious orders.

18 Q. And is that a phrase that's
19 used commonly within DEA or the industry
20 regarding reporting suspicious orders?

21 A. I don't know that it's common.

22 Q. Regardless -- okay.

23 You've heard the term "totality
24 of the circumstances" before?

25 A. Yes.

1 Q. Okay. And as we discussed
2 previously, each customer -- or I'm sorry,
3 each registrant has a different customer
4 base, right?

5 A. Correct.

6 Q. No customer -- or no
7 registrant's customer base will exactly match
8 that of another registrant?

9 A. Correct.

10 Q. And so the information
11 available to one registrant regarding whether
12 an order -- let me strike that and start
13 over.

14 The information available to
15 one registrant about a particular order and
16 the customer placing it might be different
17 than the information available to another
18 registrant?

19 A. And you're using -- I don't
20 quite understand the question yet.

21 Q. Okay. We've talked about how
22 registrants have different customer bases,
23 right?

24 A. Yes.

25 Q. And so when a registrant or a

1 wholesaler in this case is evaluating an
2 order and trying to determine whether it's
3 suspicious or not --

4 Are you with me?

5 A. Uh-huh. Yes.

6 Q. -- the information that
7 Registrant A may have about that order or
8 that customer may be different than the
9 information that is available to
10 Registrant B?

11 MR. BENNETT: Objection.

12 Vague. Incomplete hypothetical.

13 THE WITNESS: Yes, they may be
14 different.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Each registrant conducts its
17 own due diligence?

18 A. They should.

19 Q. To your knowledge, they should,
20 right?

21 A. Yes.

22 Q. So do registrants, in your
23 experience, share due diligence files?

24 A. No.

25 Q. Does the regulation -- I'm

1 looking back at Mapes Exhibit 3 -- define the
2 form or format that a suspicious order report
3 must take?

4 A. It does not.

5 Q. Does it say what information is
6 supposed to be provided to DEA?

7 A. No, it doesn't.

8 Q. Does the regulation in Mapes
9 Exhibit 3 say anything about whether a
10 registrant can ship a suspicious order?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: No, it doesn't.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And this section of the
15 regulation, 1301.74(b), it has not changed
16 since 1971?

17 A. I'm not aware of any changes.

18 Q. Are you familiar with excessive
19 purchase reports?

20 A. Yes.

21 Q. What are they?

22 A. Reports that are sent by
23 wholesalers of purchases of controlled
24 substances that they, after the fact, think
25 may be excessive.

1 Q. Was the submission of excessive
2 purchase reports, in your experience,
3 standard practice in the industry?

4 A. It was.

5 Q. Was there a particular time
6 that you believe, in your experience, it was
7 standard practice in the industry to submit
8 those?

9 A. From the time I started with
10 DEA in 1977 until we had the meetings with
11 the individual wholesalers, that was the --
12 the standard practice, to submit those.

13 Q. And in your experience, DEA
14 reviewed those reports as compliant with the
15 Controlled Substances Act?

16 MR. BENNETT: Objection.

17 Scope.

18 This is not a 30(b)(6) witness
19 who can speak on behalf of DEA.

20 You may answer in your personal
21 capacity within the limits of the
22 scope letter.

23 THE WITNESS: Yeah, I viewed
24 those as compliant with the regulation
25 for suspicious orders.

1 QUESTIONS BY MS. MCCLURE:

2 Q. And in your experience of
3 conducting audits of distribution centers,
4 that was one of your roles as a diversion
5 investigator, right?

6 A. Yes.

7 Q. Conducting audits?

8 A. Yes.

9 Q. And as a group supervisor, you
10 would oversee diversion investigators who
11 were conducting audits?

12 A. That's correct.

13 Q. And that would include a review
14 of their suspicious order monitoring systems?

15 A. That's correct.

16 Q. Including the formats that they
17 were using to submit and how they were
18 identifying and reporting suspicious orders
19 to DEA?

20 A. Correct.

21 Q. And in the course of your role
22 as a diversion investigator and a group
23 supervisor, you accepted these excessive
24 purchase reports as compliant with the
25 Controlled Substances Act?

1 MR. BENNETT: You can answer
2 that.

3 THE WITNESS: Yes.

4 QUESTIONS BY MS. MCCLURE:

5 Q. You don't recall saying to
6 anyone, "Hey, you can't submit these kinds of
7 documents" in the course of your roles as a
8 diversion investigator or a group supervisor?

9 MR. BENNETT: Objection.
10 Scope.

11 You are not authorized to
12 disclose information regarding any
13 specific DEA investigations or
14 activities.

15 You may answer this question
16 yes or no on whether you remember
17 saying that.

18 THE WITNESS: Can you repeat
19 the question?

20 QUESTIONS BY MS. MCCLURE:

21 Q. I can.

22 You don't recall saying to
23 anyone, a registrant, for example, "You can't
24 submit these kinds of excessive purchase
25 reports and still be compliant with the

1 Controlled Substances Act" in your role as a
2 diversion investigator or a group supervisor?

3 MR. BENNETT: Same objection.

4 You can answer.

5 THE WITNESS: No, I don't
6 remember saying that.

7 QUESTIONS BY MS. MCCLURE:

8 Q. And we've been talking about
9 excessive purchase reports, but sometimes
10 people -- registrants would call them by
11 different names.

12 Do you recall that, or in your
13 experience were they all called excessive
14 purchase reports?

15 A. Generally referred to as
16 excessive purchase reports. Could be called
17 suspicious order reports.

18 Q. And were they generally in a
19 similar format across the industry?

20 MR. BENNETT: Objection. Form.
21 Vague.

22 You can answer it.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Do you understand my question?

25 A. Yes.

1 They were in different formats
2 depending on the company that was sending
3 them. Some would send computer printouts.
4 Some would send copies of invoices. So there
5 are different ways that they were sent.

6 Q. They generally provided the
7 same kind of information?

8 A. Yes.

9 Q. About purchases and sales that
10 had already happened?

11 A. Correct.

12 Q. And DEA accepted those?

13 MR. BENNETT: Objection.

14 QUESTIONS BY MS. MCCLURE:

15 Q. In your personal experience?

16 MR. BENNETT: Scope.

17 You're not here as a 30(b)(6)
18 witness to answer on behalf of DEA.

19 You may answer in your personal
20 capacity of what you did.

21 THE WITNESS: Yes, we accepted
22 those.

23 MR. LANIER: Did he say -- I'm
24 trying to be careful -- "we" after you
25 told him not to speak for the DEA but

1 himself?

2 MS. MCCLURE: Mark --

3 MR. BENNETT: I believe that
4 was his testimony, yes.

5 MS. MCCLURE: That is his
6 testimony.

7 MR. LANIER: Okay.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So in your personal experience,
10 were you the only one who accepted these?

11 MR. BENNETT: You can answer.

12 THE WITNESS: No other groups
13 accepted the same type of reports.

14 QUESTIONS BY MS. MCCLURE:

15 Q. So saying "we" is referring to
16 you and those other groups, right?

17 A. The others that I was
18 supervising at the time.

19 Q. So in the course of your role
20 as a diversion investigator, as well as the
21 time when you acted as a group supervisor and
22 had diversion investigators reporting to you,
23 yes?

24 A. Yes.

25 Q. Are you aware of DEA

1 headquarters approving particular suspicious
2 order monitoring systems submitted by a
3 registrant at any time in your experience at
4 DEA?

5 MR. BENNETT: Objection. Form.
6 You can answer.

7 THE WITNESS: I do recall one
8 time that I was in headquarters and we
9 received a letter from a wholesaler
10 about their suspicious order
11 monitoring program, and we told them
12 that it did comply with the
13 requirements in the regulation.

14 QUESTIONS BY MS. MCCLURE:

15 Q. What role were you in when you
16 received that letter?

17 A. The deputy chief of liaison and
18 policy.

19 Q. And when you say "we" received
20 that letter, were you personally involved
21 with the approval of that suspicious order
22 monitoring system?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.
25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Who else is encompassed within
3 that "we" that you've provided?

4 A. A staff coordinator that
5 reviewed the incoming correspondence from the
6 company, drafted the response to the company
7 and then sent it to me for approval, or in
8 this case signature, to send it to the
9 company.

10 Q. Did you sign that?

11 A. Yes.

12 Q. And what company was that?

13 A. AmerisourceBergen.

14 Q. Can you think of any other
15 instances in which you have a personal
16 recollection of DEA's approval of a
17 suspicious order monitoring system?

18 A. No, I cannot.

19 (Mapes Exhibit 4 marked for
20 identification.)

21 QUESTIONS BY MS. MCCLURE:

22 Q. I'm going to mark an exhibit as
23 4. This is a series of letters exchanged,
24 and they're all going to be amalgamated as
25 one exhibit for today.

1 If you could take a look
2 through those letters and let me know when
3 you've had a chance to review them.

4 A. Okay. I've generally reviewed
5 them.

6 Q. Now, when I was previously
7 asking you about approvals, you recalled a
8 situation in which you had signed a letter to
9 AmerisourceBergen.

10 Is that a different set of
11 letters or a letter that is not this set
12 that's marked as Exhibit 4?

13 A. Yes, it's not included in here.

14 Q. Okay. So let me back up.

15 This set of letters is dated in
16 the '96 to '98 time period, right? Over a
17 time span through '96, '97, and then ending
18 in June 23rd -- I'm sorry, July 23, '98,
19 right?

20 A. Correct.

21 Q. And these are exchanged between
22 the Department of Justice, DEA Enforcement
23 Administration -- I'm sorry, the Drug
24 Enforcement Administration and Chris
25 Zimmerman at Bergen, right?

1 A. Correct.

2 Q. So not AmerisourceBergen
3 because this predated the merger with
4 Amerisource.

5 Are you aware of that?

6 MR. BENNETT: Objection. Form.

7 THE WITNESS: Could you restate
8 the question?

9 QUESTIONS BY MS. MCCLURE:

10 Q. Yes, I can.

11 As of 1998, Bergen was a
12 separate company from Amerisource.

13 Do you know that, or am I
14 telling you --

15 A. Yes.

16 Q. You are aware of that?

17 A. Yes, I am.

18 Q. Okay. You previously told me
19 you had signed a letter approving a system
20 that AmerisourceBergen had.

21 Was that a later letter that
22 was subsequent to the 2001 merger between
23 Amerisource and Bergen, or was that a letter
24 that you recall being part of this exchange
25 with Bergen?

1 A. It was subsequent to this. It
2 was after the merger of Amerisource and
3 Bergen.

4 Q. Do you recall the approximate
5 time period of the approval letter that you
6 recall signing regarding AmerisourceBergen's
7 suspicious order monitoring program that had
8 to have been after 2001, which was the merger
9 of those two companies?

10 MR. BENNETT: Objection. Form.

11 THE WITNESS: No, I don't
12 recall the time frame.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Can we agree it would have --
15 you recall it being AmerisourceBergen, so
16 after the merger in 2001, if I'm telling you
17 the correct date of the merger, right?

18 A. Yes.

19 Q. Would it have been prior to
20 2007, which is when there was a settlement
21 and release agreement executed between DEA
22 and AmerisourceBergen?

23 A. Yes.

24 Q. So sometime in between 2001 and
25 2007, you recall a different exchange of

1 letters that is not reflected here in Mapes
2 Exhibit 4 in which you signed a document, a
3 letter, approving AmerisourceBergen's
4 suspicious order monitoring system?

5 A. That's correct.

6 Q. In your experience at DEA,
7 would letters approving suspicious order
8 monitoring systems be things that were
9 retained, kept by DEA?

10 MR. BENNETT: Objection.

11 Scope. Calls for speculation.

12 You can answer.

13 THE WITNESS: Generally all
14 correspondence was retained.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Okay. So is it reasonable to
17 think that a letter approving a suspicious
18 order monitoring system, of which you can
19 only recall one instance of it happening,
20 would be something that would be retained by
21 DEA?

22 MR. BENNETT: Objection.

23 Scope. Calls for speculation.

24 You can answer.

25 THE WITNESS: Yes.

1 QUESTIONS BY MS. MCCLURE:

2 Q. So you don't recall when in
3 between '01 and '07 this would have been?

4 A. It would have been while I was
5 deputy chief of the liaison and policy
6 section, so it would have been during that
7 time frame.

8 Q. And would you be so kind as to
9 remind me to the best of your recollection
10 when that time frame was?

11 MR. BENNETT: Objection. Asked
12 and answered.

13 MS. MCCLURE: Yeah, it is asked
14 and answered.

15 MR. BENNETT: You can answer.

16 MS. MCCLURE: I just don't
17 remember.

18 MR. BENNETT: You can answer
19 again.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Was that approximate --

22 MR. BENNETT: Wait a second.

23 MS. MCCLURE: Okay.

24 MR. BENNETT: You have a
25 question pending.

1 MS. MCCLURE: Yeah, I have a
2 question pending, you're right.

3 THE WITNESS: I can't recall
4 the exact dates of that.

5 QUESTIONS BY MS. MCCLURE:

6 Q. But that was immediately prior
7 to you becoming chief of the E-Commerce
8 section in 2004?

9 A. No, it was immediately prior to
10 me becoming chief of the administrative
11 section.

12 Q. Planning and resources?

13 A. The planning and resources
14 section.

15 Q. And you did that from
16 approximately 2003 to 2004 as to your prior
17 testimony?

18 A. Correct.

19 Q. So can we limit the time period
20 for when this letter would have been as
21 sometime between 2001 and then 2003 when you
22 took over the chief of the planning and
23 resources section?

24 A. Yes.

25 Q. Division? Section?

1 A. Section.

2 Q. Section.

3 Okay. So between '01 and '03.

4 Understanding you've been gone
5 from DEA since 2007, do you have a copy of
6 this letter in your personal possession?

7 A. No.

8 Q. Do you recall to whom you sent
9 this letter approving of AmerisourceBergen's
10 suspicious order monitoring system sometime
11 between 2001 and 2003?

12 A. To Chris Zimmerman at
13 AmerisourceBergen.

14 Q. How did that letter come about?
15 What led to you -- strike that.

16 What led to you issuing that
17 letter?

18 MR. BENNETT: Objection.

19 Scope.

20 You are not authorized to
21 disclose the internal deliberative
22 process of the Department of Justice
23 or any attorney-client communication
24 or privileged conversations.

25 To the extent you can answer

1 the question without disclosing that
2 information, you may answer.

3 THE WITNESS: It was in
4 response to a letter from
5 AmerisourceBergen.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Was that letter from
8 AmerisourceBergen from Chris Zimmerman?

9 A. It was.

10 Q. Did you know Chris Zimmerman at
11 the time -- in this 2001 to 2003 time period?

12 A. No.

13 Q. And you said you recall a staff
14 coordinator passing that letter on to you for
15 evaluation?

16 A. To review, yes.

17 Q. What do you recall, if
18 anything, doing to evaluate the request?

19 A. I don't --

20 MR. BENNETT: Objection. Same
21 instruction regarding the internal
22 deliberative process.

23 You can answer.

24 THE WITNESS: I don't recall.

25

1 A. No, I've seen it other times
2 between the time I retired and yesterday.

3 Q. Do you recall how you saw it
4 those other times?

5 A. It was from a registrant, I
6 can't remember which one, but a registrant
7 that sent it to me that had received it from
8 DEA.

9 Q. Do you recall whether it would
10 have been shortly after this letter was sent
11 in the early course of your consulting work,
12 or was it later than that, if you can --

13 A. It was later than that.

14 Q. So it's fair to say from your
15 answers that you, it seems, did not review
16 this letter prior to it being issued, say, in
17 the last months of your tenure at DEA?

18 MR. BENNETT: Objection.

19 Scope.

20 You're not authorized to
21 disclose the internal deliberations of
22 DEA.

23 You may answer that question
24 yes or no only, whether you saw it
25 prior to leaving DEA, a draft.

1 THE WITNESS: No, I did not.

2 QUESTIONS BY MS. MCCLURE:

3 Q. If we look at paragraph 3 of
4 this letter, the second sentence says,
5 "Filing a monthly report of completed
6 transactions, e.g., excessive purchase report
7 or high unit purchases, end parens, does not
8 meet the regulatory requirement to report
9 suspicious orders."

10 Based on your experience at
11 DEA, was this a change in how DEA handled
12 suspicious order reporting?

13 MR. BENNETT: Objection.

14 Scope.

15 You're not here as a 30(b)(6)
16 witness to talk on behalf of DEA.

17 You may disclose your personal
18 knowledge regarding this topic from
19 your time at DEA, what you personally
20 did.

21 THE WITNESS: I believe from my
22 experience it was a change.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Because previously in your
25 experience at DEA excessive purchase reports

1 had been accepted by DEA for suspicious order
2 reporting as you previously testified,
3 correct?

4 MR. BENNETT: Objection.

5 Scope. This is not a 30(b)(6) witness
6 that can answer on behalf of DEA.

7 You may answer what you
8 personally did while at DEA in
9 response to that question.

10 THE WITNESS: It was a change
11 that was started, from my experience,
12 when we had the meetings with
13 individual wholesalers, individual
14 distributors, starting in 2005.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So in 2005, which you've just
17 referenced, you began talking with
18 distributors on something called the
19 Distributor Initiative?

20 A. That's correct.

21 Q. Whose idea was the Distributor
22 Initiative?

23 MR. BENNETT: Objection.

24 Scope. Objection.

25 You're not to disclose internal

1 THE WITNESS: They may know
2 about that. If their salespeople were
3 in the pharmacy and talked to the
4 pharmacist, they may know those
5 things.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Okay. Do you recall whether
8 you or others with whom you worked, to the
9 extent you know, sent this kind of
10 information out frequently or whether it was
11 uncommon?

12 MR. BENNETT: Objection.
13 Vague. Compound.

14 THE WITNESS: Uncommon.

15 QUESTIONS BY MS. MCCLURE:

16 Q. In the course of your
17 employment at DEA, you were aware that
18 registrants were shipping orders that had
19 been reported to DEA as suspicious, right?

20 MR. BENNETT: Objection.
21 Scope.

22 This is beyond the scope that
23 this witness has been authorized.

24 You may answer based on your
25 personal recollection.

1 THE WITNESS: After having the
2 distributor briefings with individual
3 wholesalers, I don't recall instances
4 where products that were reported as
5 suspicious were shipped.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Does the Controlled Substances
8 Act say that registrants should not ship
9 suspicious orders?

10 MR. BENNETT: Objection. Form.
11 Calls for a legal conclusion.

12 You can answer based on your
13 personal capacity, not on behalf of
14 DEA.

15 If you know.

16 THE WITNESS: Not specifically,
17 no.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And if an order is unusual in
20 size, frequency or pattern, do you agree that
21 that does not necessarily mean that that
22 order is going to be diverted?

23 MR. BENNETT: Objection.
24 Vague. Objection. Incomplete
25 hypothetical.

1 You can answer it.

2 THE WITNESS: I agree.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And so the fact that an order
5 or a portion of an order is diverted after a
6 distributor ships it, would you agree that
7 that does not make that order that has
8 already been shipped now suspicious, if it
9 was not suspicious at the time it was
10 shipped?

11 MR. BENNETT: Objection.

12 Vague. Objection. Calls for
13 speculation. Legal conclusion.

14 You may answer in your personal
15 capacity but not on behalf of DEA.

16 THE WITNESS: I don't really
17 understand the nuances there.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Okay. If an order is not
20 suspicious and is therefore filled and
21 shipped and later downstream is diverted,
22 that fact of that diversion does not now
23 render the order suspicious; do you agree
24 with that?

25 MR. BENNETT: Objection. Same

1 objections.

2 You can answer in your personal
3 capacity.

4 THE WITNESS: Yes.

5 QUESTIONS BY MS. MCCLURE:

6 Q. Similarly, if an order is
7 regarded as suspicious but is shipped, would
8 you agree that that order is not necessarily,
9 in fact, going to be diverted?

10 MR. BENNETT: Objection. Calls
11 for speculation. Vague. Incomplete
12 hypothetical. Outside the scope.

13 You may answer in your personal
14 capacity but not on behalf of DEA.

15 THE WITNESS: Yes.

16 MS. MCCLURE: It's 1:06. I'm
17 going to suggest we go ahead and take
18 a lunch break. That may allow us to
19 streamline.

20 MR. BENNETT: Okay. That's
21 fine.

22 VIDEOGRAPHER: We're going off
23 record. The time is 1:06.

24 (Off the record at 1:06 p.m.)

25 VIDEOGRAPHER: We're going back

1 pharmacies."

2 Do you see that language there?

3 A. I do.

4 Q. Can you explain the exception
5 for retail chain pharmacies?

6 A. No, I didn't discuss that
7 particular exception with him, so I don't
8 know why he included that.

9 Q. Did you review Mr. Zimmerman's
10 PowerPoint prior to co-presenting with him at
11 this DEA-sponsored industry conference?

12 A. I'm not sure he had a
13 PowerPoint.

14 (Mapes Exhibit 17 marked for
15 identification.)

16 QUESTIONS BY MS. MCCLURE:

17 Q. Show you a document that is
18 marked Mapes 17.

19 A. I've reviewed this.

20 Q. So does this refresh your
21 recollection that Chris Zimmerman had a
22 PowerPoint that he presented at the
23 September 11, 2007 industry conference?

24 A. No, I still don't remember the
25 presentation details.

1 Q. Okay. I'm not asking if you
2 remember the presentation details. I'm just
3 asking if you recall that Chris Zimmerman
4 stood on stage with you and made a
5 presentation and that it had a PowerPoint
6 attached in connection with it.

7 A. We were both --

8 MR. BENNETT: Objection.

9 Compound.

10 You can answer.

11 THE WITNESS: We were both on
12 stage for a presentation, but I don't
13 remember the PowerPoint.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. Was there anyone else
16 from DEA who presented on this changed
17 AmerisourceBergen program along with
18 Mr. Zimmerman, or was it only you?

19 A. It was just Mr. Zimmerman and
20 myself.

21 Q. Do you recall referring to this
22 changed program as the new industry standard?

23 A. No, I don't recall that.

24 Q. Do you believe that -- was it
25 your understanding that it was expected by

1 DEA, to your understanding, to serve as a new
2 standard?

3 MR. BENNETT: Objection.

4 Scope.

5 You're not authorized as a
6 30(b)(6) witness to speak on behalf of
7 DEA. You may answer based on your
8 personal understanding at the time.

9 THE WITNESS: It's my
10 understanding that the
11 AmerisourceBergen system was an
12 example of a system that contained the
13 type of information that we were
14 looking for.

15 QUESTIONS BY MS. MCCLURE:

16 Q. And was compliant with the
17 Controlled Substances Act?

18 A. Yes.

19 Q. And was being carried out in
20 connection with the program that you had
21 reviewed based on your personal, on-site
22 reviews of those distribution centers?

23 A. Yes.

24 Q. If you turn to page 9 of
25 whatever this PowerPoint exhibit is --

1 MR. BENNETT: Mapes 17.

2 MS. MCCLURE: Thank you. Yes,
3 Mapes 17.

4 QUESTIONS BY MS. MCCLURE:

5 Q. -- which has little Bates
6 numbers on it that end in 1786.

7 It says, "Historically,
8 controlled substance" -- I'm looking at the
9 second and third bullet -- "slash, listed
10 chemical order monitoring has been based on a
11 ship and report process."

12 And the next bullet, "ABC's OMP
13 process is now based on identify, capture,
14 investigate and report suspicious orders, all
15 prior to shipment."

16 Do you see that language?

17 A. Yes, I do.

18 Q. And was it your understanding
19 that this was one of the new features of the
20 changed program that AmerisourceBergen had
21 developed?

22 A. Yes.

23 Q. And this was new not just to
24 AmerisourceBergen but to the wholesale
25 industry?

1 that.

2 Do you recall actually visiting
3 pharmacies on behalf of ABDC?

4 A. Yes.

5 Q. Do you recall how often?

6 A. Generally it would be two or
7 three times a year for a week, but seeing
8 several pharmacies in that week's time in a
9 part of the country.

10 Q. What kind of activities would
11 you perform at the pharmacy?

12 A. Looking at the pharmacies,
13 seeing what kind of customers they had, what
14 kind of drugs they were selling, the
15 relationship between the pharmacy and the
16 physicians, discussing issues with the
17 pharmacist.

18 Q. Did anyone from ABDC accompany
19 you on these visits to pharmacies?

20 A. Yes, every time.

21 Q. And do you know whether ABDC
22 was also performing other on-site visits at
23 pharmacies that you were not personally
24 involved with?

25 A. Yes, they were.

1 Q. Did you also perform audits of
2 AmerisourceBergen Drug Corporation's
3 suspicious order monitoring program?

4 A. Yes, I did.

5 Q. How many times did you audit
6 the order monitoring program?

7 A. Annually for five or six years.

8 Q. And do you recall concluding
9 that ABDC's suspicious order monitoring
10 program for those audits that you conducted
11 was in compliance with the Controlled
12 Substances Act?

13 A. That's not the review that I
14 was conducting.

15 Q. Tell me about the review that
16 you were conducting.

17 A. I was looking at it to
18 determine if it was in compliance with the
19 ABC policies and procedures.

20 Q. Okay. And those ABC policies
21 and procedures were the policies and
22 procedures that were developed in connection
23 with the changed program in 2007, correct?

24 A. In conjunction with that and
25 changes that were made subsequent to that.

1 Q. Okay. So it would have been
2 the policies and procedures that were enacted
3 that you would have reviewed back in 2007
4 during your time at DEA, as well as any
5 updates or improvements that had been made to
6 them subsequent?

7 A. Yes.

8 Q. And did you determine that ABDC
9 was in compliance with its policies and
10 procedures for these annual audits?

11 A. There were generally issues to
12 discuss, improvements to be made, but
13 generally in compliance, yes.

14 Q. Going back to excessive
15 purchase reports.

16 DEA's acceptance of excessive
17 purchase reports changed at some point,
18 correct?

19 MR. BENNETT: Objection.

20 Scope.

21 You're not authorized to speak
22 on behalf of DEA. You may speak on
23 your personal knowledge of what you
24 observed while working at DEA.

25 THE WITNESS: The nature of the

1 reports that I was involved with that
2 were accepted did change, yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And what was the change?

5 A. It was change from a report
6 that was called an excessive purchase report
7 after the fact to a report that was of
8 specific suspicious orders before they were
9 shipped.

10 Q. And that's the change that
11 we've talked about that AmerisourceBergen had
12 in the April, May, June 2007 time period that
13 you reviewed, correct?

14 A. Yes.

15 Q. Were you aware of any industry
16 participants making that change prior to that
17 program that you reviewed in April, May and
18 June of 2007?

19 A. I don't recall the exact dates
20 when other companies were making the changes,
21 but it was a change that happened routinely
22 after we had the Distributor Initiative
23 meeting with companies.

24 Q. And was this -- do you know if
25 this was viewed by industry, based on your

1 registration fees?

2 A. The majority is registration
3 fees. There are also a few positions that
4 are from appropriated funds, but very few.

5 Q. Earlier today you testified
6 about the emergence of Internet pharmacies in
7 the early 2000s.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. Internet pharmacies represented
11 a significant shift in pharmaceutical
12 diversion, correct?

13 MR. BENNETT: Objection.

14 Vague.

15 You can answer.

16 THE WITNESS: They did
17 represent a shift.

18 QUESTIONS BY MR. EPPICH:

19 Q. There were concerns that DEA's
20 anti-diversion group was understaffed to
21 address the Internet pharmacy issue?

22 A. I don't recall those concerns,
23 no.

24 Q. DEA decided that one way to
25 help combat the Internet pharmacies would be

1 to establish this Internet Distributor
2 Initiative, correct?

3 Excuse me, the Internet -- let
4 me strike that.

5 One way that -- and DEA decided
6 that one way to combat the Internet pharmacy
7 issue would be to establish the Distributor
8 Initiative, correct?

9 MR. BENNETT: You can answer.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. EPPICH:

12 Q. And these Distributor
13 Initiative meetings were meant to educate
14 distributors about Internet pharmacies?

15 A. Yes.

16 Q. And during the Distributor
17 Initiative meetings, you introduced
18 additional diligence, guidance and
19 instructions to distributors to confirm that
20 a distributor is not servicing a rogue
21 Internet pharmacy, correct?

22 MR. BENNETT: Objection.

23 Vague.

24 THE WITNESS: To help them
25 understand what to look at to

1 determine if a customer is a rogue
2 Internet pharmacy.

3 QUESTIONS BY MR. EPPICH:

4 Q. The objective of this
5 additional diligence that you were requesting
6 out of distributors was for the distributors
7 to be able to identify those rogue Internet
8 pharmacy customers of theirs, correct?

9 A. Yes.

10 Q. You were not intending the
11 additional diligence to require distributors
12 to investigate the inner workings of every
13 independent pharmacy across America that they
14 may service, correct?

15 MR. BENNETT: Objection.

16 Vague. Objection. Scope.

17 You may speak on your personal
18 capacity but not on behalf of DEA in
19 response to this question.

20 THE WITNESS: I was expecting
21 that over time they would use the same
22 procedures for all the pharmacies that
23 they were dealing with to be certain
24 that there wasn't a problem that they
25 wouldn't see without the extra due

1 diligence.

2 QUESTIONS BY MR. EPPICH:

3 Q. And the problem that they were
4 to be looking for was whether or not they
5 were an Internet pharmacy?

6 A. An Internet pharmacy or any
7 pharmacy that was selling drugs for other
8 than legitimate medical purpose.

9 Q. Such as a pill mill, correct?

10 A. Yes.

11 Q. Now, during the distributor
12 briefings, you told distributors that you
13 were not concerned with large retail chain
14 pharmacies at the time, correct?

15 A. No.

16 Q. That's not correct?

17 A. I don't believe so.

18 Q. Do you recall instructing
19 distributors at the distributor briefings to
20 conduct due diligence on retail chain
21 pharmacies?

22 A. I don't recall that we made a
23 distinction between retail chain pharmacies
24 and independent pharmacies.

25 Q. In asking the distributors to

1 QUESTIONS BY MR. EPPICH:

2 Q. But it's not always, is it,
3 sir?

4 A. I don't think so.

5 Q. You'd agree with me the
6 distributors have no insight into determining
7 whether a doctor has overprescribed opioids
8 to her patient?

9 MR. BENNETT: Objection. Form.
10 Calls for speculation. Incomplete
11 hypothetical.

12 THE WITNESS: Generally not.

13 QUESTIONS BY MR. EPPICH:

14 Q. Are you familiar with the term
15 "illegal prescribing"?

16 A. Yes.

17 Q. What is illegal prescribing?

18 A. Prescribing controlled
19 substances for other than a legitimate
20 medical purpose.

21 Q. Is illegal prescribing a form
22 of diversion?

23 A. Yes.

24 Q. You'd agree with me that
25 illegal prescribing contributes to the opioid

1 crisis?

2 A. Yes.

3 Q. Earlier today you testified
4 about meetings that you had with the
5 plaintiffs' counsel in 2018.

6 Do you remember that testimony?

7 A. Yes.

8 Q. I believe you said you had two
9 meetings, one in the summer and one in the
10 fall of 2018, correct?

11 A. Yes.

12 Q. Now, did you -- during those
13 meetings with the plaintiffs' counsel in
14 2018, did you tell plaintiffs' counsel that
15 the DEA had approved the distributors'
16 submission of excessive purchase reports
17 after orders had been shipped?

18 A. I believe that was discussed,
19 yes.

20 Q. Did you tell plaintiffs'
21 counsel during those meetings that in your
22 experience excessive purchase reports
23 complied with the requirements of the
24 Controlled Substances Act and its
25 regulations, at least for your time at DEA

1 between 1977 and the distributor briefings?

2 A. Yes.

3 Q. Did you tell plaintiffs'
4 counsel during these meetings in 2018 that
5 the Controlled Substances Act and its
6 regulations do not include a no shipping
7 requirement?

8 A. I don't believe so.

9 Q. You didn't discuss the no
10 shipping requirement?

11 A. I don't recall that
12 specifically.

13 Q. During these meetings with the
14 plaintiffs' counsel in 2018, did you tell
15 plaintiffs' counsel the distributor briefings
16 focused on Internet pharmacy issues?

17 A. Yes.

18 Q. Did you tell plaintiffs'
19 counsel that the additional diligence you
20 requested of distributors at these
21 distributor briefings was to help identify
22 Internet pharmacies?

23 A. I don't recall specifically
24 that was how it was worded.

25 Q. But something similar?

1 A. Yes.

2 Q. At these meetings with
3 plaintiffs' counsel in 2018, did you tell
4 plaintiffs' counsel that distributors had no
5 access to the ARCOS data submitted by other
6 distributors?

7 A. I don't believe so.

8 Q. Did you discuss ARCOS data with
9 the plaintiffs' counsel in 2018?

10 A. There was a discussion of ARCOS
11 data, what it consists of and what's
12 available.

13 Q. Did you discuss who had access
14 to ARCOS data during your meetings with
15 plaintiffs' counsel?

16 A. I don't recall if we did.

17 Q. After your discussions with the
18 plaintiffs' counsel, the plaintiffs did not
19 contact you to ask you to serve as an expert
20 for plaintiffs in this case, correct?

21 A. That's correct.

22 Q. Do you recall what other topics
23 you discussed with plaintiffs' counsel during
24 these meetings in 2018?

25 A. Not really. It was just a

1 record. The time is 4:20.

2 (Off the record at 4:20 p.m.)

3 VIDEOGRAPHER: We're going on
4 the record. Beginning of Media
5 File 10. The time is 4:34.

6 EXAMINATION

7 QUESTIONS BY MR. STEPHENS:

8 Q. Mr. Mapes, good afternoon. My
9 name's Neal Stephens. I'm from the Jones Day
10 law firm, and I represent Walmart.

11 We met earlier today, but you
12 and I have never spoken before?

13 A. That's correct.

14 Q. Okay. I'll also be asking you
15 some questions, not just on Walmart's behalf
16 but also on behalf of retail chain
17 pharmacies. And for your benefit, that will
18 include CVS, Rite Aid, Walgreens and HBC and
19 Giant Eagle.

20 Okay?

21 A. Yes.

22 Q. Okay. All right.

23 And since I'm going last, I've
24 carved out a lot of material out of my
25 outline, but I do have a couple follow-up

1 questions on some of the topics that you've
2 already testified to today.

3 Okay?

4 A. Okay.

5 Q. And the first one is, there was
6 a series of questions from a couple of my
7 colleagues that related to shipping orders
8 that had been flagged as suspicious.

9 Do you recall that line of
10 questions?

11 A. Yes.

12 Q. And you had indicated that at
13 some point you were aware that registrants
14 had a practice of shipping orders that had
15 been reported as suspicious.

16 Do you recall that?

17 A. That had been reported before
18 2005 in excess -- in suspicious or excessive,
19 that they had shipped those.

20 Q. I'm just -- right.

21 So my point is that you were
22 just aware that there had been a practice at
23 some point in time that orders that had been
24 flagged as potentially suspicious had still
25 been shipped. I'm just trying to reorient

1 you --

2 A. Yes.

3 Q. -- to that testimony. Okay?

4 Now, is it fair --

5 MR. BENNETT: Objection.

6 Mischaracterizes his testimony. He
7 said suspicious or excessive, not just
8 suspicious.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Is it fair to say that
11 you're not aware of any deadline that DEA set
12 that changed this practice related to the
13 shipping of suspicious orders?

14 A. I'm aware that the practice was
15 changed as we had meetings with wholesalers
16 in 2005 and beyond; that then they changed
17 from sending the excessive or suspicious
18 orders after the fact, and they started doing
19 it ahead of the fact and then resolving that
20 suspicion before they shipped.

21 Q. Okay. Mr. Mapes, but are you
22 aware of any deadline that was set, any date
23 certain set by DEA sent out to the
24 registrants, as to what date that practice
25 had to change?

1 MR. BENNETT: Objection. Asked
2 and answered.

3 THE WITNESS: I'm not aware of
4 a specific deadline.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. All right. Another
7 topic that you addressed earlier today in the
8 first session of questioning related to what
9 DEA's expectations were of various
10 registrants about how they designed their SOM
11 system.

12 Do you recall that line of
13 questions?

14 A. Yes.

15 Q. And just to reorient you, it
16 was basically along the lines of your
17 expectation was that a SOMs system for a
18 registrant was not a one-size-fits-all
19 proposition, correct?

20 A. Correct.

21 Q. It would depend on the
22 registrant's business model, right?

23 A. Yes.

24 Q. Okay. And it's a situation
25 where, for example, some distributors supply

1 them about the issues presented by rogue
2 Internet pharmacies?

3 A. That's correct.

4 Q. Can you recall how many
5 meetings you personally attended?

6 A. No.

7 Q. Can you estimate?
8 Was it more than ten?

9 A. My estimate is 10 or 12.

10 Q. Okay. But it wouldn't have
11 been more than 15?

12 A. I'm not really certain.

13 Q. Okay. How about this: It
14 wouldn't have been more than 20?

15 A. Probably not.

16 Q. Okay. Were there others? Did
17 you have other colleagues at DEA during this
18 time frame that you're aware of who were also
19 meeting with wholesale distributors on this
20 distributor briefing?

21 A. There were others after I
22 retired from DEA who were doing it. I think
23 I was involved in every one of the
24 distributor briefings while I was still
25 there.

1 Q. Okay. And can you refresh me
2 on when these briefings started?

3 Was it 2005?

4 A. Yes.

5 Q. Okay. And you retire in
6 mid-2007?

7 A. October of 2007, yes.

8 Q. You remember that date, right?

9 A. Yes.

10 Q. Okay. After 30 years, you can
11 remember that date, right?

12 Okay. Fair enough.

13 All right. So in between 2005
14 and October of 2007, your recollection is, is
15 that there were about 12 or so Internet
16 distributor briefings that you conducted with
17 wholesale distributors?

18 A. Yes.

19 Q. Okay. And was each of those
20 like a one-on-one meeting between DEA and one
21 wholesale distributor?

22 A. One distributor, several people
23 from the distributor at times, sometimes an
24 individual, and sometimes with counsel,
25 sometimes without.

1 Q. Okay. So my point, Mr. Mapes,
2 is your recollection of the entirety of the
3 number of wholesale distributors who received
4 this briefing during your career at DEA is
5 about 12?

6 A. About that.

7 Q. Okay. How did DEA -- or how
8 did you select which wholesale distributor
9 was going to receive the briefing?

10 A. We started at first with
11 Amerisource, Cardinal and McKesson because
12 they're obviously those with the largest
13 volume, and then we went to lower volume
14 distributors such as HD Smith and others that
15 were maybe regional distributors, not
16 nationwide distributors, that kind of thing.

17 Q. Okay. So you've identified
18 four.

19 Can you recall any of the other
20 eight or so that you met with during your
21 career?

22 A. Not right now, I can't.

23 Q. You did not meet with Walmart
24 to provide an Internet distributor briefing
25 between 2005 and 2007, correct?

1 A. That's correct.

2 Q. Do you agree that during this
3 time frame DEA acknowledged in presentations
4 that it made that no chain pharmacies were
5 rogue pharmacies?

6 MR. BENNETT: You can answer.

7 THE WITNESS: I don't believe
8 that was in DEA presentations.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Let me see if I can
11 refresh your recollection.

12 A. Okay.

13 (Mapes Exhibit 19 marked for
14 identification.)

15 QUESTIONS BY MR. STEPHENS:

16 Q. So I'm going to show you what's
17 been marked as Deposition Exhibit Number 19.
18 It's a document that is Bates-numbered
19 US-DEA-00002413.

20 And if you look at the very
21 first slide, it says "Internet Pharmacies."
22 It's got Mr. Rannazzisi's name there, and
23 it's a slide deck.

24 Do you see that?

25 A. Yes.

1 Q. And I'd ask you to turn to
2 Slide 50 in the presentation. It's almost
3 all the way at the back, Mr. Mapes.

4 Do you see that?

5 A. I do.

6 Q. And Slide 50 details -- the
7 title is "The Rogue Pharmacy."

8 Do you see that?

9 A. Yes.

10 Q. Do you see the second bullet?

11 A. Yes.

12 Q. What does the second bullet
13 say?

14 A. "No chain pharmacies."

15 Q. Okay. And does this appear to
16 you to be a presentation that DEA provided on
17 the topic of Internet pharmacies?

18 MR. BENNETT: Objection.

19 Foundation.

20 And I also object that the
21 witness did not have a chance to
22 review the entire document or
23 understand the context of the
24 particular slide that you pointed him
25 out to.

1 Scope. Vague. Incomplete
2 hypothetical. Calls for speculation
3 and calls for a legal conclusion.

4 THE WITNESS: I believe the DEA
5 should take some appropriate action,
6 and that should be expected.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. Let me switch gears here
9 a little bit.

10 And what I'd like to do is ask
11 you some questions about some of -- some of
12 the investigative techniques that DEA has
13 that may be different than what a registrant
14 might be able to do as it's setting up its
15 SOM program.

16 Okay?

17 A. Okay.

18 Q. During your tenure as a DEA
19 investigator, were there occasions where you
20 were able to identify a potential diverter
21 based on information that DEA developed as
22 opposed to information that was provided to
23 DEA by a registrant in a suspicious order
24 report?

25 MR. BENNETT: Objection.

1 Scope.

2 You may answer that question
3 yes or no only.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Would you agree that DEA
7 has unique law enforcement investigative
8 powers that are available to DEA to identify
9 potential diverters that are not available to
10 a registrant like Walmart?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. DEA has subpoena power,
16 for example, correct?

17 A. That's correct.

18 Q. Walmart does not have subpoena
19 power to subpoena a doctor, correct?

20 A. Not that I'm aware of.

21 Q. Okay. Now, DEA can issue
22 subpoenas to help investigate potential
23 diversion, right?

24 MR. BENNETT: Objection. Form.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Based on your experience, do
3 you agree that DEA can issue a subpoena to
4 help investigate potential diverters?

5 MR. BENNETT: You can answer,
6 if you know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And during your time at
10 DEA, DEA collected information in diversion
11 investigation through subpoenas?

12 MR. BENNETT: Objection.
13 Scope.

14 You may answer that question
15 yes or no only.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. To your knowledge, did Joe
19 Rannazzisi ever authorize you or anyone else
20 to share information with any registrant the
21 DEA had obtained through subpoenas?

22 MR. BENNETT: Objection.
23 Scope.

24 You may answer that question
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Would you agree that search
4 warrants are a second vehicle that provide
5 DEA an investigative tool that registrants
6 like Walmart do not have?

7 MR. BENNETT: You can answer.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. DEA can apply to a
11 magistrate judge to obtain a search warrant,
12 right?

13 A. Yes.

14 Q. And a search warrant would give
15 DEA the ability to potentially search rogue
16 pain clinics to obtain documents that might
17 advance a diversion investigation the DEA is
18 conducting?

19 A. That's correct.

20 MR. BENNETT: Objection.

21 Objection. Scope.

22 You can answer that yes or no
23 only based on your personal
24 experiences.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Based on your personal
3 experience, Mr. Mapes, DEA also can obtain
4 what is known as an ISP search warrant, an
5 Internet service provider search warrant,
6 which allows DEA to intercept e-mail
7 communications which would include
8 conversations between a doctor and the
9 doctor's patients that might relate to
10 diversion, true?

11 MR. BENNETT: Objection.

12 Scope.

13 You are authorized to answer
14 whether you know of a document
15 entitled an "ISP search warrant" in
16 your personal experience, yes or no
17 only.

18 THE WITNESS: No.

19 QUESTIONS BY MR. STEPHENS:

20 Q. You've never heard of an ISP
21 search warrant?

22 A. No.

23 Q. Okay. All right.

24 But just on the topic of search
25 warrants generally, we'll go to premises

1 search warrant, which is the first example I
2 gave you where you go to a magistrate, the
3 magistrate authorizes DEA to go to address X
4 and DEA conducts a search there.

5 You're familiar with those,
6 right?

7 A. Yes.

8 Q. Okay. Now, did Joe Rannazzisi
9 ever authorize, to your knowledge, anyone at
10 DEA to disclose to any registrant any
11 information obtained from a search warrant so
12 that that registrant could help DEA in a
13 diversion investigation?

14 MR. BENNETT: Objection.

15 Scope.

16 You may answer that question.

17 THE WITNESS: Not that I'm
18 aware of.

19 MR. BENNETT: Well --

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay.

22 MR. BENNETT: He's answered
23 your question.

24 I do object to the scope of
25 that. I was going to authorize him to

1 answer that yes or no only.

2 He has said not to his

3 knowledge, so we can move on.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And just to reconfirm, Walmart
6 has no ability to go to a magistrate judge to
7 obtain a search warrant, right?

8 A. That's correct.

9 Q. No registrant can go to a
10 magistrate judge and seek a search warrant,
11 right?

12 A. I wouldn't say that, because
13 DEA is a registrant, so...

14 Q. Okay. Other than law
15 enforcement agencies, no private sector
16 registrant can go to a magistrate and seek a
17 search warrant; is that fair?

18 A. Yes.

19 Q. All right. The use of the
20 grand jury is a third example of an
21 investigative technique that is unique to law
22 enforcement and something that is not
23 available to private sector registrants,
24 fair?

25 MR. BENNETT: Objection.

1 Scope. Objection. Form. Calls for a
2 legal conclusion.

3 You can answer, if you know, in
4 your personal knowledge.

5 THE WITNESS: Yes.

6 MR. BENNETT: I'm sorry, I'm
7 not sure I understand his answer to
8 your question on whether somebody in
9 the private sector can go to the grand
10 jury or not.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Okay. So let me restate it.

13 Based on your experience at
14 DEA, can anyone other than law enforcement
15 use the grand jury as a tool to conduct due
16 diligence on a customer?

17 A. No.

18 Q. Okay. Would you agree that the
19 grand jury is an investigative technique that
20 is available to law enforcement and law
21 enforcement only?

22 MR. BENNETT: Objection.

23 Vague. Objection. Calls for a legal
24 conclusion.

25 You can answer in your personal

1 knowledge, if you know.

2 THE WITNESS: Yes, it is a
3 tool.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And DEA can subpoena a
6 suspected diverter to the grand jury and ask
7 him questions under the penalty of perjury
8 related to whether that individual has
9 diverted any controlled substances?

10 MR. BENNETT: Objection.
11 Vague. Objection. Calls for a legal
12 conclusion. Objection. Foundation.

13 If you have any personal
14 knowledge whether DEA can subpoena a
15 suspected diverter -- oh, and
16 objection. Scope.

17 You may answer in your personal
18 knowledge.

19 THE WITNESS: My personal
20 opinion is that DEA can serve a
21 subpoena that was issued, but DEA
22 doesn't issue subpoenas.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The subpoena would be
25 issued by either a federal prosecutor's

1 office, a US Attorney's office, or a state
2 prosecutor's office?

3 A. Yes.

4 Q. A district attorney's office,
5 right?

6 A. Yes.

7 Q. Okay. If DEA and the
8 prosecutors believe that a witness has lied
9 in providing testimony to a grand jury, that
10 individual could be prosecuted for perjury,
11 right?

12 MR. BENNETT: Objection.

13 Incomplete hypothetical. Calls for a
14 legal conclusion. Scope.

15 You can answer based on your
16 personal experience, if you know.

17 THE WITNESS: I haven't had the
18 personal experience of that happening,
19 no.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. Would you agree that
22 being able to compel witnesses to the grand
23 jury and answer questions under the penalty
24 of perjury is a very valuable tool to DEA in
25 building diversion cases?

1 MR. BENNETT: Objection.

2 Vague. Scope. Calls for a legal
3 conclusion.

4 You can answer.

5 THE WITNESS: Yes.

6 QUESTIONS BY MR. STEPHENS:

7 Q. And Walmart cannot compel
8 witnesses to testify in front a grand jury,
9 correct?

10 A. That's correct.

11 Q. And the other companies who
12 you've met today at your deposition, none of
13 them have the ability to compel any witnesses
14 to go to a grand jury; is that fair?

15 A. That's correct.

16 Q. Okay. Would you agree that
17 conducting undercover operations present a
18 fourth example where DEA has unique
19 investigative tools to conduct diversion
20 investigations?

21 MR. BENNETT: Objection.

22 Vague. Objection. Scope.

23 If you have an opinion, you may
24 answer that question yes or no only.

25 THE WITNESS: Yes.

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. For example, based on
3 your experience conducting diversion
4 investigations, DEA can use undercover
5 officers to purchase controlled substances
6 from diverting Internet pharmacies and pain
7 clinics?

8 MR. BENNETT: Objection.

9 Scope.

10 You are not authorized to
11 disclose confidential law enforcement
12 investigative or intelligence-
13 gathering and dissemination techniques
14 whose effectiveness would thereby be
15 impaired.

16 To the extent that you can
17 answer the question without disclosing
18 confidential law enforcement
19 investigative techniques, you can
20 answer. Otherwise, you are instructed
21 not to answer.

22 THE WITNESS: Yes, they can.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The undercover officers
25 in a DEA operation, for example, in a

1 diversion investigation, are allowed to
2 legally tape record the conversations that
3 they have with the operator of the business
4 that's under investigation?

5 MR. BENNETT: Objection.

6 Scope.

7 You are not authorized to
8 disclose confidential law enforcement
9 techniques or how undercover
10 investigations are done. Also, you
11 are not authorized to draw legal
12 conclusions.

13 I'm instructing you not to
14 answer that question.

15 MR. STEPHENS: On what --

16 MR. FARRELL: Sustained.

17 MR. STEPHENS: On what basis?

18 MR. BENNETT: That it's a
19 confidential law enforcement
20 investigative technique on how they do
21 investigations and what evidence they
22 gather.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Are you aware, Mr. Mapes, that
25 there had been literally thousands of

1 investigations that have played out in
2 courtrooms across the United States of
3 America where United States Attorneys have
4 put DEA agents on the stand and have played
5 tapes of undercover operations to convince
6 juries to convict drug traffickers under
7 Title 21?

8 MR. BENNETT: You may answer
9 that question, based on your personal
10 knowledge, yes or no only.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Okay. So then undercover
14 officers can legally tape record
15 conversations that they have with the
16 operators of the businesses that DEA is
17 investigating; is that fair?

18 MR. BENNETT: Objection. Calls
19 for a legal conclusion. Scope.

20 I don't think this witness can
21 draw a legal conclusion in this
22 deposition.

23 You're asking whether he can
24 legally tape. I don't think he's both
25 authorized to do that or qualified to

1 make a conclusion. Plus, I think it's
2 an incomplete hypothetical.

3 So I'm going to instruct him
4 that he's not authorized on behalf of
5 DEA or use any DEA information in
6 answering that question.

7 MR. STEPHENS: Okay. I will
8 move on to conserve time.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Would you agree that Walmart
11 and CVS, Walgreens, Rite Aid, do not have the
12 ability to use law enforcement agents to
13 conduct undercover operations of businesses?

14 MR. BENNETT: Objection.
15 Vague. Incomplete hypothetical.
16 Calls for a legal conclusion.

17 You can answer if you have an
18 opinion.

19 THE WITNESS: No, I'm not
20 really certain about that.

21 QUESTIONS BY MR. STEPHENS:

22 Q. Okay. Are you aware that it
23 might be illegal in certain states for a
24 private actor, private company, to secretly
25 tape record conversations with other people?

1 MR. BENNETT: Objection.

2 Scope.

3 To the extent you have personal
4 information, you can answer that --
5 you can give your personal opinion.

6 Calls for a legal conclusion.

7 THE WITNESS: I don't know
8 which states may have which laws, so I
9 can't really answer that.

10 QUESTIONS BY MR. STEPHENS:

11 Q. So you don't know one way or
12 the other. Okay.

13 To your knowledge, did Joe
14 Rannazzisi ever authorize you or anyone else
15 that you know of at DEA to disclose to
16 registrants who could help DEA in diversion
17 investigations information that DEA had
18 obtained in undercover operations?

19 MR. BENNETT: Objection.

20 Scope.

21 You are not authorized to
22 disclose information regarding
23 specific DEA investigations or
24 activities. You may answer this
25 question yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. As a fifth example of an
4 investigative technique that is unique to DEA
5 and federal law enforcement, would you agree
6 that DEA, in a local US Attorney's Office,
7 has the ability to apply to a judge for an
8 order that would allow DEA to record
9 telephone calls made by the subject of DEA's
10 investigation, a Title 3 wiretap?

11 MR. BENNETT: You can answer
12 that question.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And would you agree that a
16 Title 3 wiretap allows DEA to listen in to
17 every discussion over the target's telephone?

18 MR. BENNETT: Objection.
19 Scope. Calls for a legal conclusion.
20 Incomplete hypothetical.

21 You can answer, if you know.

22 THE WITNESS: Every call except
23 for those that are required to be
24 minimized.

25

1 QUESTIONS BY MR. STEPHENS:

2 Q. Okay. Very good.

3 And that's spelled out in the
4 order that the judge -- the DEA and the
5 US Attorney's Office present to the judge and
6 the judge signs, right?

7 A. Yes.

8 Q. Okay. All right. Another form
9 of electronic surveillance is a room bug.
10 Are you familiar with a room
11 bug?

12 MR. BENNETT: Objection.
13 Scope.

14 He's not authorized to disclose
15 confidential law enforcement
16 investigative or intelligence-
17 gathering techniques, the
18 effectiveness of which would be
19 impaired.

20 You may answer this question
21 yes or no only whether you are
22 familiar with the term "a room bug."

23 THE WITNESS: Yes.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. A room bug is like a

1 You can answer in your personal
2 capacity if you have an opinion.

3 THE WITNESS: Yes, it could be.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And based on your
6 30 years at DEA, are you aware of any
7 situation where Joe Rannazzisi or anyone else
8 who was running the Office of Diversion
9 Control ever authorized you or anyone else at
10 DEA to disclose to a registrant who could
11 help DEA in a diversion investigation the
12 information that DEA had obtained through
13 electronic surveillance?

14 MR. BENNETT: Objection. Form.
15 Scope. Compound.

16 You're not authorized to
17 disclose any information regarding
18 specific DEA investigations or
19 activities.

20 You may answer this question
21 yes or no only, if you understand.

22 THE WITNESS: Could you restate
23 the question?

24 QUESTIONS BY MR. STEPHENS:

25 Q. Sure.

1 Based on your 30 years at DEA,
2 are you aware of any situation where anyone
3 who is running the Office of Diversion
4 Control ever authorized you or anyone else at
5 DEA to disclose to a registrant who could
6 help DEA in a diversion investigation with
7 information that DEA had obtained through
8 electronic surveillance?

9 MR. BENNETT: Same objections
10 and instruction.

11 THE WITNESS: No, I'm not.

12 QUESTIONS BY MR. STEPHENS:

13 Q. All right. Let's talk about
14 number 6, and that will be information from
15 state medical boards or state local law
16 enforcement. Okay?

17 DEA, during your tenure and on
18 investigations you worked, obtained
19 information from state and local law
20 enforcement regarding diversion
21 investigations the DEA was conducting; is
22 that accurate?

23 MR. BENNETT: Objection.

24 Scope.

25 You can answer yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Would you agree that
4 private sector registrants like the companies
5 that you've met here today do not have the
6 ability to obtain information from state and
7 local law enforcement investi -- state and
8 local law enforcement regarding
9 investigations that state and local law
10 enforcement is conducting on suspected
11 diverters?

12 MR. BENNETT: Objection. Form.
13 Incomplete hypothetical. Calls for
14 speculation.

15 You can answer, if you have an
16 opinion.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Let me strike the question and
19 ask a better question.

20 A. Okay.

21 Q. That question wasn't so
22 artfully crafted, Mr. Mapes.

23 Are you aware of any situation
24 during your tenure at DEA where state and
25 local law enforcement shared information with

1 a registrant related to an investigation that
2 state and local law enforcement was doing of
3 a suspected diverter?

4 MR. BENNETT: Objection.
5 Scope.

6 You can answer that question
7 yes or no only.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Would you agree that DEA
11 can obtain information from state medical
12 boards regarding investigations that the
13 state medical board is conducting?

14 MR. BENNETT: You can answer
15 that question.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Are you aware of any
19 situation where a state medical board
20 provided information to a non-law enforcement
21 registrant related to investigation --
22 pending investigations that the state medical
23 board was conducting?

24 MR. BENNETT: You can answer
25 that question yes or no only.

1 for a legal conclusion.

2 You may answer based on your
3 personal experience and personal
4 knowledge while you were at DEA.

5 THE WITNESS: They have not
6 provided that that I'm aware of.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. So information from
9 NADDIS would be a seventh example where DEA
10 agents can use that information, but private
11 sector companies cannot obtain that
12 information related to pending investigations
13 where the registrant might be able to help
14 DEA with its diversion investigation?

15 MR. BENNETT: Objection.

16 Vague. Form.

17 You can answer.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. Okay. So let's talk about
21 ARCOS here briefly.

22 You testified a little bit
23 about ARCOS earlier.

24 Do you recall that?

25 A. Yes.

1 Q. Okay. Now, DEA could analyze
2 ARCOS information from all registrants to
3 develop leads on potential diverters during
4 your tenure at DEA; is that fair?

5 MR. BENNETT: You can answer
6 it.

7 THE WITNESS: Yes, it is.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And was that information
10 helpful in advancing DEA diversion
11 investigations?

12 MR. BENNETT: Objection.
13 Vague.

14 You can answer.

15 THE WITNESS: Yes, it was.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. During your tenure at
18 DEA, did DEA share ARCOS information it
19 received from one distributor with all other
20 distributors?

21 MR. BENNETT: You can answer
22 that question.

23 THE WITNESS: No.

24 QUESTIONS BY MR. STEPHENS:

25 Q. So did Mr. Rannazzisi, when he

1 ran the Office of Diversion Control, ever
2 authorize you or anyone else, to your
3 knowledge, at DEA to disclose to a registrant
4 who could help advance DEA's investigation of
5 a suspected diverter with information from
6 ARCOS that related to information that had
7 been supplied to DEA from other registrants?

8 MR. BENNETT: Objection.

9 Scope. Vague. Form.

10 You can answer that question
11 yes or no only.

12 THE WITNESS: No.

13 QUESTIONS BY MR. STEPHENS:

14 Q. To your knowledge, did anyone
15 who ran the Office of Diversion Control at
16 DEA during your tenure there ever authorize
17 you or anyone else at DEA to disclose to a
18 registrant who could help advance DEA's
19 investigation of a suspected diverter with
20 information from ARCOS that related to
21 information that had been supplied to DEA
22 from other registrants?

23 MR. BENNETT: Objection. Form.

24 Scope. Vague.

25 You can answer that question

1 yes or no only.

2 THE WITNESS: No.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. Move on to my next
5 topic.

6 You testified a little bit
7 earlier about your background and how you had
8 worked in field divisions and then had gone
9 to headquarters, right?

10 A. Yes.

11 Q. And you also provided some
12 information about how DEA is structured and
13 how certain squads have DEA enforcement
14 agents and other squads have DEA diversion
15 investigators.

16 Do you recall that testimony?

17 A. Yes.

18 MR. BENNETT: Objection.

19 Mischaracterizes testimony.

20 MR. STEPHENS: I don't think
21 so, but...

22 QUESTIONS BY MR. STEPHENS:

23 Q. You also -- during your tenure
24 at DEA, when you were retiring, is it fair
25 that there were about 20 field divisions or

1 so throughout the country at DEA?

2 MR. BENNETT: You can answer.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And each division is run by a
6 special agent in charge?

7 A. It is.

8 Q. And the special agent in charge
9 is known as the SAC, the S-A-C?

10 A. Yes.

11 Q. Okay. And that's the highest
12 level at a field division, right?

13 A. Yes.

14 Q. Okay. And there are a couple
15 other high-level positions, one of which
16 would be the assistant special agent in
17 charge, the ASAC; is that fair?

18 A. Fair.

19 Q. And another high-level position
20 in the field is what they call a RAC, a
21 resident agent in charge, fair?

22 A. Yes.

23 Q. Okay. Now, based on your
24 experience at DEA, how many of -- how many
25 SACs can you identify that came up through

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, JULY 12, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW
16 VOLUME II
17 - - -

18 Videotaped deposition of Michael
19 Mapes, held at the offices of The Mining
20 Exchange, A Wyndham Grand Hotel & Spa, 8
21 South Nevada Avenue, Colorado Springs,
22 Colorado, commencing at 8:01 a.m., on the
23 above date, before Carrie A. Campbell,
24 Registered Diplomate Reporter and Certified
25 Realtime Reporter.

26 - - -
27 GOLKOW LITIGATION SERVICES
28 877.370.3377 ph | 917.591.5672 fax
29 deps@golkow.com
30

1 A. That would be the Sudafed.

2 Q. Okay. So this system, this
3 approval, is for the entire diversion control
4 program and suspicious order monitoring
5 system, based on what you've seen in these
6 letters?

7 A. For the entire suspicious order
8 monitoring system, yes.

9 Q. Okay. Thank you.
10 And so looking again at a
11 demonstrative document that Mr. Lanier had
12 shown you, I want to make sure I have this
13 right, that this approved not only the method
14 of providing information but the system that
15 was used to identify suspicious orders as
16 well, correct?

17 A. Yes.

18 Q. And that this was not just
19 related to methamphetamines, it was related
20 to all controlled substances, whether it's
21 methamphetamine, opioids or anything else
22 that's regulated under 1301.74(b), correct?

23 A. Yes.

24 (Mapes Exhibit 33 marked for
25 identification.)

1 QUESTIONS BY MS. MCCLURE:

2 Q. I'm going to hand you a
3 document that's been marked Exhibit 33.

4 Let me know when you've had a
5 chance to review that.

6 A. Okay.

7 Q. And so you testified in a
8 lawsuit in West Virginia in 2016, correct?

9 A. Yes.

10 Q. And in that you testified that
11 the shift from ship and then report to
12 instead halt and investigate was a gradual
13 change, right?

14 A. Yes, it was.

15 Q. And that the regulations did
16 not change, but the DEA's interpretation of
17 them did, right?

18 A. Yes.

19 Q. And that companies were
20 responding to DEA's changed interpretation
21 and then coming up with programs to handle
22 that new different expectation, right?

23 A. That's correct.

24 Q. And there was not a date
25 certain by which companies were expected or

1 anticipated to implement the changes to DEA's
2 new interpretation of 1301.74(b)?

3 A. That's correct.

4 Q. And so here Mr. Lanier had
5 excerpted a statement you had made to me
6 yesterday when I was originally talking to
7 you, right, and that you had accepted these
8 excessive purchase reports as compliant with
9 the Controlled Substances Act, right?

10 That's what you testified to
11 yesterday?

12 A. Yes.

13 Q. And then Mr. Lanier presented
14 you with this document that said that
15 essentially after-the-fact reporting of
16 suspicious orders has never been in
17 compliance with federal law according to the
18 DEA's guidance.

19 That testimony, to the extent
20 that this actually reflects your testimony,
21 which I don't believe it does, is not
22 actually consistent with the testimony you
23 gave earlier yesterday or with the testimony
24 you gave in 2016 when you were under oath in
25 that proceeding, correct?

1 MR. BENNETT: Objection. Form.

2 MR. LANIER: Objection. Form.

3 MR. BENNETT: Misstates

4 testimony.

5 THE WITNESS: The regulation

6 didn't change. So the regulation was

7 still there, but the practice was to

8 allow them to send the excessive

9 purchase reports and that that was

10 considered to be in compliance, even

11 though the regulation hadn't changed

12 to allow that or to not allow that.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And so that was -- the

15 submission of excessive purchase reports was

16 considered, in your experience at DEA, to be

17 in compliance with the Controlled Substances

18 Act for the period of time that those reports

19 were accepted, correct?

20 A. Yes.

21 Q. Just one moment.

22 And in addition, I just asked

23 you a question as to whether they were in

24 compliance with the Controlled Substances

25 Act.

1 They were also then in
2 compliance -- I just asked you a question
3 that stated that they were in compliance --
4 the acceptance of the excessive purchase
5 reports is being compliant -- was compliant
6 with the Controlled Substances Act.

7 They were also compliant with
8 the regulations that underscored and
9 implemented that act, correct?

10 MR. BENNETT: Objection.

11 Scope.

12 You may answer based on your
13 personal understanding, but you may
14 not speak on behalf of DEA.

15 THE WITNESS: Personally we
16 accepted them, the excessive purchase
17 reports, as compliant for the
18 suspicious order monitoring, yes.

19 MS. MCCLURE: Okay. Thank you,
20 Mr. Mapes.

21 I have no further questions,
22 and at this time I turn my time over
23 to counsel for additional defendants.

24 Thank you very much.

25 MR. LANIER: Make sure there's

1 no fuss. I'm going to have one of the
2 other lawyers do our recross.

3 Nobody's got any problem with
4 that, do they?

5 Thank you.

6 (Mapes Exhibit 34 marked for
7 identification.)

8 RE-EXAMINATION

9 QUESTIONS BY MR. EPPICH:

10 Q. Good afternoon, Mr. Mapes. My
11 name is Chris Eppich. Once again, I'm from
12 the McKesson company.

13 A. Good afternoon.

14 Q. I'm going to hand you what I've
15 marked as Exhibit Number 34 in this
16 litigation.

17 Exhibit 34, Mr. Mapes, is a
18 partial list of the attorneys in this case.

19 Do you see at the top of the
20 page it says, "1:17-md-02804-DAP, In Re:
21 National Prescription Opiate Litigation, Dan
22 Aaron Polster presiding"?

23 Do you see that, sir?

24 A. I do.

25 Q. And then it says "attorneys."

1 Do you see that, sir?

2 A. Yes.

3 Q. If we could turn to page 2 of
4 Exhibit 34, the third name down, sir, Richard
5 W. Fields, do you recognize that name?

6 A. Yes.

7 Q. Is Mr. Fields the attorney that
8 you met with during the summer and the fall
9 2018?

10 A. Yes, he's one of them.

11 Q. And do you see under
12 Mr. Fields' name he has his firm name,
13 Fields, PLLC?

14 Do you see that?

15 A. Yes.

16 Q. And then the address of his
17 firm?

18 Do you see that?

19 A. Yes.

20 Q. Did you have your meetings at
21 the Fields law firm in 2018 at that address,
22 if you recall?

23 A. I don't believe it was.

24 Q. Do you see under Mr. Fields'
25 address and e-mail it says the words "lead

1 attorney, attorney to be noticed"?

2 Do you see that, sir?

3 A. Yes.

4 Q. Earlier today, plaintiffs'

5 counsel asked you questions about two of its

6 expert witnesses, Mr. Jim Geldhof and Mr. Jim

7 Rafalski.

8 Do you remember that

9 discussion?

10 A. Yes, I do.

11 Q. Now, in your time at DEA, did

12 you have an opportunity to work on projects

13 with Mr. Geldhof?

14 MR. BENNETT: Objection.

15 Scope.

16 You can answer that question

17 yes or no only.

18 THE WITNESS: Yes.

19 QUESTIONS BY MR. EPPICH:

20 Q. You had the opportunity to

21 evaluate his work product?

22 A. No.

23 Q. Do you have any personal

24 knowledge as to his experience,

25 qualifications or effectiveness with DEA

1 say.

2 QUESTIONS BY MR. EPPICH:

3 Q. You don't recall?

4 A. I just don't recall.

5 Q. Now, earlier today the
6 plaintiffs' counsel asked you and showed you
7 a slide. He asked you some questions about
8 other causes of the opioid crisis, e.g.,
9 illegal prescribing.

10 Do you remember this
11 conversation?

12 A. Yes.

13 Q. And he asked you whether or not
14 a good suspicious order monitoring system can
15 help catch that.

16 Do you remember that testimony,
17 sir?

18 A. Yes.

19 Q. Are you familiar with HIPAA?

20 A. Yes.

21 Q. What is HIPAA?

22 A. The Health Insurance Privacy
23 Act or something like that.

24 Q. Now, pursuant to that Act,
25 distributors don't have access to a patient's

1 medical records, correct?

2 A. Generally, no.

3 Q. And distributors are not in the
4 doctor's office when the doctor and the
5 patient are talking, are they?

6 A. Not in my experience, no.

7 Q. Now, you'll recall that
8 plaintiffs' counsel asked you -- he presented
9 the following question to you earlier today
10 in a slide titled "Diversion Control 101."

11 He asked you: "If a company
12 sees a suspicious order, the company has a
13 choice to make, ship/sell or hold and
14 investigate."

15 Do you remember this slide?

16 A. Yes.

17 Q. But this question isn't found
18 in the Controlled Substances Act, is it?

19 A. It doesn't say that
20 specifically in the Controlled Substances
21 Act, no.

22 Q. And it doesn't say this
23 specifically in the regulations, correct?

24 A. No.

25 Q. You started to ask distributors

1 to ask themselves this question as a part of
2 the distributor briefings, correct?

3 A. We did.

4 MR. EPPICH: Thank you,
5 Mr. Mapes. I have no further
6 questions.

7 We can go off the record.

8 VIDEOGRAPHER: We're going off
9 the record. The time is 1:33.

10 (Off the record at 1:33 p.m.)

11 VIDEOGRAPHER: Going back on
12 the record. Beginning of Media
13 File 7. Time, 1:39.

14 MR. EPPICH: Just a quick
15 housekeeping issue.

16 For the record, let's go ahead
17 and mark as Exhibit 4A, document
18 bearing Bates number ABDCMDL00269347
19 through 358.

20 And let's mark as Exhibit 35
21 three pages from the demonstratives
22 that plaintiffs presented this
23 morning, further marked up by
24 defendants.

25 We can go off.

1 (Mapes Exhibit 35 marked for
2 identification.)

3 VIDEOGRAPHER: Going off record
4 at 1:40.

5 (Off the record at 1:40 p.m.)

6 VIDEOGRAPHER: We're going back
7 on record. Beginning Media File 8.
8 The time is 1:59.

9 RE-EXAMINATION

10 QUESTIONS BY MS. FITZPATRICK:

11 Q. Good afternoon, Mr. Mapes. We
12 met briefly yesterday, but my name is Laura
13 Fitzpatrick, and I'm here on behalf of the
14 plaintiffs, and I'm going to take over for
15 Mr. Lanier for a little bit.

16 I want to just kind of reorient
17 you and the jury here. I'd like to talk --
18 just a second.

19 I'd like to kind of redirect
20 us, call this my redirect roadmap that
21 Ms. Lanier made for me here.

22 I'd like to take us from the
23 muddy waters that you were brought into over
24 the last, I think, 45 minutes or so, back on
25 to what I'm going to call clarity road.